

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:)
)
WILEY BROWN & ASSOCIATES, LLC,)
)
)
)
Debtor.)
)
Case No. 06-50886 11
)

AMENDED ORDER AND OPINION

This matter came before the court on September 27, 2006, for a hearing on the Motion for Relief from Stay filed by Mechanics & Farmers Bank. Robert Lefkowitz appeared on behalf of the Debtor, Matthew Bryant appeared on behalf of Mechanics & Farmers Bank ("M&F"), Daniel Bruton appeared on behalf of the City of Winston-Salem (the "City"), and Sarah Bruce appeared on behalf of the Bankruptcy Administrator. An Order and Opinion was issued on October 11, 2006. This matter came before the court again on October 20, 2006 on a Motion to Amend or Alter Judgment. Robert Lefkowitz appeared on behalf of the Debtor, Matthew Bryant appeared on behalf of M&F, Daniel Bruton appeared on behalf of the City, and Michael West appeared on behalf of the Bankruptcy Administrator. After considering the Motions, the evidence, and the arguments of counsel, the court finds and amends its prior order and opinion as follows:

BACKGROUND

On November 19, 2003, the Debtor executed a promissory note in favor of M&F in the original principal amount of \$630,000.00 which was secured by a deed of trust (the "Deed of Trust") on commercial real property located on Trade Street in downtown Winston-Salem (the "Real Property"). The City is also a secured creditor of the Debtor, holding a second deed of

trust against the Real Property. The outstanding amount of the indebtedness owed by the Debtor to the City is approximately \$98,000.00.

Prior to the bankruptcy filing, the Debtor defaulted under the terms of the Deed of Trust and M&F commenced foreclosure proceedings. On May 16, 2006, a foreclosure sale was conducted. M&F was the high bidder at the foreclosure sale, submitting a bid in the amount of \$601,725.38. The City concedes that it received notice of the sale but did not bid on the Real Property. On May 26, 2006, Cecil Brown, whose petition originally indicated that he owned a one-half interest in the Debtor, filed a petition under Chapter 13 of the Bankruptcy Code. On October 4, 2006, Cecil Brown filed an Amended Schedule B in his Chapter 13 case that indicated that he had no ownership interest in Wiley Brown Associates, LLC. Nonetheless, Cecil Brown filed a Suggestion of Bankruptcy with the Forsyth County Clerk's Office at 4:14 pm on May 26, 2006, the date of his original filing. No bids were received during the 10-day upset bid period.

On July 11, 2006 (the "Petition Date"), the Debtor filed a petition under Chapter 11 of the Bankruptcy Code. The Debtor listed the Real Property on Schedule A, with a value of \$1,550,000.00. M&F seeks an order which lifts the stay to allow it to finalize the foreclosure sale, as well as an order compelling a transfer of all rents received from the property. The City of Winston Salem filed an objection to M&F's motion and contends that the foreclosure sale was not commercially reasonable and should be set aside. The Debtor fully supports the City's position and has commenced an adversary proceeding against M&F asserting a claim under 11 U.S.C. § 548.

DISCUSSION

The only issue presently before the court is whether cause exists to lift the automatic stay

to allow M&F to record the deed to the Real Property and collect rents. The Debtor and City contend that M&F's motion for relief from stay should be denied because the notice of foreclosure sale ("Notice of Foreclosure") prepared by M&F was insufficient, the foreclosure sale was tainted by the filing of the Suggestion of Bankruptcy, and the sale was a fraudulent transfer.

At the October 20, 2006 hearing on Debtor's Motion to Amend or Alter Judgment, the Debtor indicated that it no longer wishes to pursue its adversary proceeding under § 548 with regards to this transfer. Inasmuch as this contested issue involves significant issues of North Carolina state law, this court makes no findings as to the validity of the sale, and M&F's motion for relief from stay is GRANTED.

SERVICE LIST

Robert Lefkowitz
P. O. Box 1150
High Point, NC 27260-5239

Daniel Bruton
Elizabeth Repetti
P. O. Box 21029
Winston-Salem, NC 27120-1029

Robert E. Price, Jr.
1144 West Fourth Street
Winston-Salem, NC 27101

Matthew H. Bryant
723 Coliseum Drive
Winston-Salem, NC 27106

Wiley Brown & Associates, LLC
P. O. Box 16496
Winston-Salem, NC 27115-6496

Michael D. West
P. O. Box 1828
Greensboro, NC 27402